AMO REPORTS 82-16

BILL C-61 - THE YOUNG OFFENDERS ACT: IMPLICATIONS FOR MUNICIPALITIES

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
AUGUST 1982

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

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BILL C-61
THE YOUNG OFFENDERS ACT:
IMPLICATIONS FOR MUNICIPALITIES

1. INTRODUCTION

The federal government has recently proposed Bill C-61, the Young Offenders Act, in an effort to reform the outdated juvenile justice system in Canada. Currently, juvenile justice is administered under the federal Juvenile Delinquents Act, a law that has been in effect since 1908 and not revised since 1929. It is generally agreed that the Juvenile Delinquents Act does not adequately reflect changing public attitudes in Canadian society with respect to the treatment of young offenders.

Coincident with federal initiatives, the provincial government is preparing parallel legislation related to provincial administration of the new Act, including the added costs and services that the Province will be obligated to provide to young offenders.

As municipalities provide local police services and share child welfare costs, they too will be impacted by the new legislation. It is vitally important, therefore, that municipalities familiarize themselves with the proposed legislative changes and seek input, where possible, into revisions to the Act that affect municipal responsibility and jurisdiction.

The following paper will focus on the major issues of the Young Offenders Act that are of concern to municipalities. These may be summarized as follows:

1) Underlying principles of the Act,
2) Jurisdiction by offence and age,
3) Diversion programs,
4) Dispositions,
5) Funding.

2. UNDERLYING PRINCIPLES

The Young Offenders Act is based essentially on six principles:

1) Young people should bear more responsibility for illegal acts they commit, although they will not be held accountable in the same way as adults are.

2) In order to protect society from such illegal behaviour, young offenders may require supervision, discipline and control.

3) Young offenders have special needs because they are dependents at varying levels of development and maturity. They therefore also require guidance and assistance.

4) Alternative measures to the formal court process should be considered for a young offender, as long as such a solution is consistent with the protection of society.

5) Young people have rights and freedoms, including:
   - a right to participate in deliberations which affect them,
   - a right to the least interference with their freedom which is compatible with the protection of society, their own needs and their families' interests,
   - a right to be informed of all their rights and freedoms.

6) Young offenders should only be removed from their families when continued parental supervision is inappropriate. The Act recognizes the responsibility of parents for the care and supervision of their children.[1]

The principles stated above have obvious implications for municipalities in terms of increasing reliance on the child welfare system in dealing with young offenders, as opposed to the criminal justice system. The major problem becomes translating such commendable principles into concrete laws that can be administered in the most cost effective manner.

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1 The Solicitor General of Canada, Highlights of the Young Offenders Act, February, 1981, p.4.

3. JURIDSICTION BY OFFENCE AND AGE

The Young Offenders Act applies only to those young people charged with offences against the Criminal Code and other federal statutes. It does not apply to those charged with offences against provincial laws or municipal by-laws. In addition, such status offences as "sexual immorality" will be abolished.

Under the new Act the age of criminal responsibility will be raised from seven to twelve years. Children under twelve are not considered accountable under criminal law for any offence they might commit. If a child under this age did commit a harmful act, he or she would be dealt with under provincial law.[2]

At present the maximum age in Ontario for "juvenile delinquency" is under sixteen, although some provinces have been allowed to set a higher age. Under the new Act, no maximum age has yet been established although the Solicitor General has recently proposed that the age of 18 become the standard for all provinces.[3]

Ontario's position is that the present age of 16 should be retained and that there is no need for a uniform age across Canada. However, if the maximum age is to be uniform, Ontario feels it should be 16. The rationale for this belief is that young persons in Ontario are already granted certain "adult" rights, such as being entitled to own a gun, to operate a motor vehicle and to receive social assistance. In

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2 Ibid., p.5.

3 The Children's Aid Society of Metropolitan Toronto, Response to Ontario Consultation Paper, Implementing Bill C-61 - the Young Offenders Act, March, 1982, p.3.

addition, many 16 and 17 year-olds are capable of committing serious crimes. "A general sense of responsibility will not be promoted by making such young people fall within a concept of reduced responsibility."[4]

With the age of criminal accountability being raised to 12, the Province will now be responsible for action against children under that age. Two proposals presently being considered are: (1) enacting a Provincial Child Offender Act, or; (2) using existing child welfare legislation, i.e., The Child Welfare Act.

A Child Offender Act would operate under the following guidelines:

> "Where a child under 12 years of age engages in conduct which would, if he were an adult, contravene the Criminal Code, other federal statutes, or provincial statutes and municipal by-laws, the child might be brought before the provincial court (family division). It would be determined whether or not the child did engage in such conduct and, if so, a range of dispositions might be provided with the purpose of treating the child not as a criminal but as one requiring help, guidance and proper supervision. Some of the non-custodial dispositions in the federal Young Offenders Act might be appropriate. Some additional dispositions might be provided, considering the young age and reduced responsibility of the child.[5]

In effect, this approach would permit a continuation of current practices and procedures for dealing with misconduct by children under 12 years in Ontario.

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4 Inter-Ministry Implementation Project, Implementing Bill C-61, The Young Offenders Act, An Ontario Consultation Paper, November, 1981, p.4.

5 Ibid., p.31.

An alternative approach would be to use child welfare legislation. Under Ontario's Child Welfare Act, the definition of a child in need of protection includes a child who is "found associating with an unfit or improper person" or where "the person in whose charge the child is, is unable to control the child". Where a child is found to be in need of protection, the court can make one of three orders:

1) the child may be placed with, or returned to, the parents, subject to supervision by the Children's Aid Society;

2) the child may be made a temporary ward of the Society;

3) the child may be made a Crown ward and placed in the care of the Society.[6]

Since children under 12 rarely commit serious crimes, wardship would seem to be an extreme intervention.[7] Instead, more support to families could be offered, under the auspicies of Children's Aid Societies, as a means of keeping families intact and in view of the principle that the least restrictive alternative be used. In addition, mandatory parental supervision could be ordered if it were deemed in the best interests of the child. Finally, children under 12 who have committed more serious acts, i.e., arson, could be admitted to a locked treatment unit, with the consent of the Minister.

The Children's Aid Society of Metropolitan Toronto has endorsed the option of using child welfare legislation for the under 12 age group.[8] Implications from exercising this option, however, include an increase in intake and assessment services, and in preventive and counselling services. This would involve a corresponding increase in financial commitment both from the Province and from municipalities, which presently assume responsibility for approximately 20% of the expenditures of Children's Aid Societies.

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6 Ibid., p.31.

7 Ibid., Table I, Appendix.

8 The Children's Aid Society of Metropolitan Toronto, op.cit., p.3.

For provincial and municipal offences committed by young persons between the ages of 12 and 16, the Province proposes three possible courses of action.

1) Make the Young Offenders Act applicable to provincial offences: deal with all 12-16 year-olds using the same legal process;

2) Utilize the existing procedures under the Provincial Offences Act as far as practicable: deal with all provincial offences in the same way regardless of age;

3) Develop procedures which incorporate elements of both the Young Offenders Act and the Provincial Offences Act: deal with all provincial offences by young persons in the same way but provide for their special needs.[9]

As the provincial government has stated no preferences with respect to the course of action it intends to pursue, it would be premature to speculate on the implicatons for municipalities. Nevertheless, it is not too early for municipalities to engage in an in-depth analysis of each of the options to ensure that the Province is aware of municipal concerns and suggestions prior to the passage of any legislation that will impact municipalities.

4. DIVERSION PROGRAMS

It has been recognized for some time that many young people are brought to court unnecessarily, when other effective ways to deal with young offenders may already exist in provinces and in local communities. These diversion programs may involve community services, counselling or restitution agreements; their common characteristic is that they are all voluntary.

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9 Inter-Ministry Implementation Project, op.cit., p. 10

The Ontario government is hesitant about implementing any major diversion or "alternative measure" programs for young offenders. "In summary, a general endorsement of alternative measures would not be warranted at the present time until much more is known. Therefore, since administration of this section of the proposed Act will be up to the Province to determine how to proceed, Ontario would not engage in major program development."[10]

Instead, the Ontario government favours an approach that relies on police discretion to take action or divert the young person from the courts and the juvenile justice system. Given this approach, it is essential that police departments establish effective working relationships with child welfare and other community agencies responsible for assisting children guilty of misconduct. The renewed emphasis on community based non-custodial solutions for controlling young offenders will mean that the workload of municipal police departments will, in all likelihood, be significantly increased.[11] Consequently, municipalities are likely to incur further costs as the police assume greater responsibility for diverting young people from the courts.

The Children's Aid Society of Metropolitan Toronto has pointed out that attempts to divert young persons from the juvenile justice system, as a preventive measure, must start early in the lives of children, often before the child is 12 years old, and would include such services as family counselling, parent education, etc. Under present financial arrangements, however, Children's Aid Societies are incapable of providing these services.[12]

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10 Ibid., p.10.

11 Ontario Municipal Social Services Association, Proposed Changes in Federal Legislation for Young Offenders and Related Provincial Policy Developments and Options - Their Implications for Municipalities, June, 1981, p.14.

12 The Children's Aid Society of Metropolitan Toronto, Comments on the Young Offenders Act, June, 1981, p.3.

5. DISPOSITIONS

The range of dispositions or youth court sentences provided under the new Act include:

- an absolute discharge;
- a fine of up to $1,000;
- a restitution or compensation order for loss of or damage to property, loss of income, or special damages which arose because of personal injury to the victim of the offence;
- an order of compensation in kind or by way of personal service to the victim of the offence;
- a community service order, which would require the young offender to perform a specified amount of work for the community;
- probation for up to two years;
- committal to intermittent or continuous custody for up to two years.
- additional conditions which the judge considers in the best interests of the young offender or society, such as the surrender of illegal goods;
- any combination of these dispositions, as long as the combination does not exceed two years in duration for any one offence.[13]

In no case would a young person be subject to a greater penalty than the maximum penalty applicable to an adult committing the same offence.

Under the Juvenile Delinquents Act a child could be placed directly in a foster home or committed to the charge of a Children's Aid Society. Under the proposed Young Offenders Act, however, a child would no longer be placed in the care of a Children's Aid Society, or directly in a foster or group home. However, the court could order that the young person "reside in such place as the provincial director or his delegate may specify". If there is need for intervention by the Children's Aid Society separate action could be taken under the Child Welfare Act.[14]

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13 The Solicitor General of Canada, op.cit., p.10

14 Inter-Ministry Implementation Project, op.cit., p.16

The Young Offenders Act emphasizes preventive and family support programs at the community level as the preferred alternative to court ordered services. In order to ensure that services are in place to meet the needs of young offenders serving community based dispositions, it is imperative that municipalities have the resources to carry out their new mandate. Private and voluntary child welfare agencies, themselves severely limited in staff and resources, are likely to approach both the Province and municipalities for finances in order to meet the new service obligations imposed on them by the Young Offenders Act. In addition, given the devolution of responsibility for children with special needs to the local level, it is anticipated that Children's Services Committees will assume increasing demands for planning and co-ordinating children's services.

The Young Offenders Act provides that a young person may be committed to custody for a period not to exceed two years and be placed in such place of custody as the provincial director may specify. Place of custody is defined as "a community residential centre, group home, child care institution, training school, detention centre or facility, correctional institution, forest or wilderness camp, or other like place or facility that is designated for the containment or restraint of young persons by the Lieutenant Governor in Council of a province or his delegate".[15]

It is apparent that there are few group homes, child care institutions or residential treatment facilities in the province that provide the type of restricted access to the community indicated by the proposed Act. There is also concern with respect to the authority of the provincial director in determining the place of custody after the judge has made the custody order. It is unclear whether new custodial institutions will be established, whether private centres and group homes, already limited in number, will be accessed or whether local Children's Aid Societies are expected to provide "custodial facilities".

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15 Ibid., p.17.

6. FUNDING

Currently, most costs related to the administration of juvenile justice are the sole responsibility of the Province, although the federal government does contribute to the cost of some juvenile correctional services and legal aid.

Under the proposed Young Offenders Act present funding arrangements will have to be re-evaluated. Federal-provincial cost-sharing agreements have yet to be determined.

> "Cost-sharing discussions about all children's services are currently taking place between the Province and the municipalities which presumably will result in modifications to the present cost-sharing arrangements. At present, the average municipal contribution to all children's services is about 8%. The residential probation placements involve a 50% contribution by municipalities, other services like Children's Aid Societies involve a maximum of 20% by municipalities, and many programs are funded 100% by the Province."[16]

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16 The Children's Aid Society of Metropolitan Toronto, op.cit., p.16.

RECOMMENDATIONS

1. That the present Child Welfare Act be retained with respect to offences commited by children under the age of 12.

2. That the Province conduct a cost/benefit analysis for a selected municipality in order to assess the impact of each of the Young Offenders Act, the Provincial Offences Act, or a combination of approaches on young offenders between the ages of 12 and 16.

3. That municipalities endorse the principle of alternative measures programs and that OMSSA and AMO monitor the Solicitor General and the Ministry of Community and Social Services in an effort to determine viable ways of implementing alternative measure programs that would respond to the best interests of the young offender, his or her family and the community.

4. That youth court judges, prior to imposing a community service order, be required to obtain the consent of the agency through which service is to be provided.

5. That the authority of the Provincial Director be more clearly articulated with respect to rights and responsibilities and the limitations thereof.

6. That the provincial government clearly designate the "custodial facilities" that will be used for dispositions under the Young Offenders Act.

7. That municipalities ensure that their by-laws allow for the establishment of group homes and residential treatment facilities for the care of young offenders.

8. That the Province establish a policy that promotes a range of facilities and programs for custodial and non-custodial dispositions throughout the province.

9. That AMO enter into negotiations with the Province with respect to the specific services to be cost-shared under the Young Offenders Act.

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